

Appl. No. 10/087,628  
Amdt. dated July 30, 2003  
Reply to Office action of July 15, 2003

**REMARKS/ARGUMENT**

The subject application stands with independent claims 1, 7, 11 and 13. These claims stand rejected as being unpatentable under 35 USC 103(a) over Kiesewetter et al. Patent No. 6,218,944 in view of Ohlhausen Patent No. 3,756,200. The rejections are respectfully traversed and reconsideration is requested insofar as the claims are above clarified.

In the reasoning underlying the rejection of claim 1, the Examiner advises as follows.

...Kiesewetter et al. disclose an EAS marker assembly (figure 2) comprising a housing (10, 11) defining an interior cavity (12) and an EAS marker (13, col. 3, line 56 through col. 4, line 10). Kiesewetter et al disclose the instant claimed invention except for: the housing defining first and second tabs extending outwardly, each of the first and second tabs defining an aperture extending therethrough. Kiesewetter et al. disclose that the label can be attached to intended article by gluing, mounting or sewing (col. 3, lines 61-64). Ohlhausen teaches a tick eradicator having a housing (40) having first and second tabs (41) extending outwardly, wherein each of the first and second tabs defining an aperture therethrough (figure 3; col. 2, lines 30-40) for securing the housing (40) to the animal. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to utilize the housing as taught by Ohlhausen into the system as disclosed by Kiesewetter et al. for the purpose of attaching/stabilizing the housing onto a protect garment.

Issue is taken with the propriety of the combination of the two references under Section 103. The Ohlhausen patent has nothing whatever to do with EAS markers or surveillance, dealing with the repelling of ticks on animals through the use of a molded plastic strip material containing an insect repellent material.

Appl. No. 10/087,628  
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As clarified, claim 1 reads as follows.

1. An EAS marker assembly comprising a housing defining an interior cavity and an EAS marker contained in said housing interior cavity, said housing defining first and second tabs extending outwardly of first and second different sides of said housing, each of said first and second tabs defining an aperture extending therethrough. (emphasis added)

The Examiner acknowledges the failure of the primary reference to disclose or suggest any tab extending outwardly of the EAS housing. The secondary reference discloses plural tabs but they extend outwardly of but a single side of the molded plastic strip. The combination of the teachings of the two references, if proper under Section 103, accordingly fails to disclose or suggest the content of claim 1. Claim 1 is accordingly submitted as patentable.

In the reasoning underlying the rejection of claim 7, the Examiner advises as follows.

...Kiesewetter et al. disclose an EAS marker assembly (figure 2) comprising a housing (10, 11) defining an interior cavity (12) and an EAS marker (13, col. 3, line 56 through col. 4, line 10). Kiesewetter et al disclose the instant claimed invention except for: the housing defining first and second tabs extending outwardly, each of the first and second tabs defining an aperture extending therethrough, an article of manufacture defining a first an second aperture extending therethrough, and a joinder device extending through the aperture of the first and second tabs and securing the EAS marker assembly to the article of manufacture. Ohlhausen teaches a tick eradicator having a housing (40) having first and second tabs (41) extending outwardly, wherein each of the first and second tabs defining an aperture therethrough (figure 3; col. 2, lines 30-40) and a joiner (50) having a shaft portion of diameter equal to a diameter of the tab aperture and a locking device securable to the joiner (col. 2, lines 41-45). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to utilize the housing as taught by Ohlhausen into the system as disclosed by Kiesewetter et al. for the purpose of attaching/stabilizing the housing onto a

Appl. No. 10/087,628  
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protect garment. Furthermore, an article of manufacture is not mentioned/disclosed but it would have been obvious to a person of ordinary skill in the art at the time the invention was made to know that the housing having first and second tabs (41) extending outwardly, wherein each of the first and second tabs defining an aperture extending therethrough and a joiner (50) having a shaft portion of diameter equal to a diameter of the tab aperture and a locking device securable to the joiner as taught by Ohlhausen can be used for securing the housing to any article of manufacture for the purpose of monitoring/tracking the unauthorized removal.

The propriety of the combination of the two references is challenged as aforesaid.

Claim 7 is above clarified to recite that the tabs extend outwardly of different sides of the housing.

The Examiner acknowledges the failure of the primary reference to disclose or suggest any tab extending outwardly of the EAS housing. The secondary reference discloses plural tabs and joinder members but the tabs extend outwardly of but a single side of the molded plastic strip. The combination of the teachings of the two references, if proper under Section 103, accordingly fails to disclose or suggest the content of claim 7.

Claim 7 is accordingly submitted as patentable.

The reasoning underlying the rejections of claims 11 and 13 is substantively the same as that used in the rejections of claims 1 and 7. These claims are likewise above clarified to recite that the tabs extend outwardly of different sides of the housing. The arguments above set forth on behalf of patentability of claims 1 and 7 are likewise applicable to claims 11 and 13, which are submitted accordingly as patentable.

Reliance is placed on In re Fine, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988) and Ex

Appl. No. 10/087,628  
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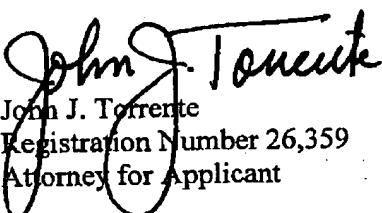
parte Kochan, 131 USPQ 204 (Bd. App. 1960) for allowance of the dependent claims, since they differ in scope from parent independent claims submitted as patentable.

Patentability of all claims is believed to have been established and, as such, it is submitted that this application is now in condition for allowance. Indication to that effect is solicited.

Should the Examiner be of the view that an interview would expedite consideration of this Amendment or of the application at large, request is made that the Examiner telephone undersigned counsel for applicant at (212) 682-9640.

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Respectfully Submitted,

  
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